



Senate

General Assembly

File No. 707

January Session, 2015

Substitute Senate Bill No. 967

Senate, April 16, 2015

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING REVISIONS TO THE CONNECTICUT
BUSINESS CORPORATION ACT, THE UNIFORM LIMITED
PARTNERSHIP ACT AND THE CONNECTICUT LIMITED LIABILITY
COMPANY ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 33-706 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 (a) A shareholder may vote his shares in person or by proxy.

4 (b) A shareholder or his agent or attorney-in-fact may appoint a
5 proxy to vote or otherwise act for the shareholder by signing an
6 appointment form or by an electronic transmission of the appointment.
7 An electronic transmission of the appointment must contain or be
8 accompanied by information from which one can determine that a
9 shareholder or his agent or attorney-in-fact authorized the electronic
10 transmission.

11 (c) An appointment of a proxy is effective when a signed

12 appointment form or an electronic transmission of the appointment
13 that conforms with the requirements of subsection (b) of this
14 subsection is received by the inspector of election or the officer or
15 agent of the corporation authorized to tabulate votes. A photographic
16 or similar reproduction of an appointment, or a telegram, cablegram,
17 facsimile transmission, wireless or similar transmission of an
18 appointment received by such person shall be sufficient to effect such
19 appointment. An appointment of a proxy is valid for eleven months
20 unless a longer period is expressly provided in the appointment.

21 (d) An appointment of a proxy is revocable unless the appointment
22 form or electronic transmission of the appointment states that it is
23 irrevocable and the appointment is coupled with an interest.
24 Appointments coupled with an interest include the appointment of: (1)
25 A pledgee; (2) a person who purchased or agreed to purchase the
26 shares; (3) a creditor of the corporation who extended it credit under
27 terms requiring the appointment; (4) an employee of the corporation
28 whose employment contract requires the appointment; or (5) a party to
29 a voting agreement created under section 33-716.

30 (e) The death or incapacity of the shareholder appointing a proxy
31 does not affect the right of the corporation to accept the proxy's
32 authority unless notice of the death or incapacity is received by the
33 secretary or other officer or agent authorized to tabulate votes before
34 the proxy exercises his authority under the appointment.

35 (f) An appointment of a proxy made irrevocable under subsection
36 (d) of this section is revoked when the interest with which it is coupled
37 is extinguished.

38 (g) [A] Unless an appointment of a proxy otherwise provides, an
39 appointment made irrevocable under subsection (d) of this section
40 continues in effect after a transfer of the shares and a transferee takes
41 subject to the appointment, except that a transferee for value of shares
42 subject to an irrevocable appointment may revoke the appointment if
43 he did not know of its existence when he acquired the shares and the
44 existence of the irrevocable appointment was not noted conspicuously

45 on the certificate representing the shares or on the information
46 statement for shares without certificates.

47 (h) Subject to section 33-708 and to any express limitation on the
48 proxy's authority stated in the appointment form or electronic
49 transmission of the appointment, a corporation is entitled to accept the
50 proxy's vote or other action as that of the shareholder making the
51 appointment.

52 Sec. 2. Section 33-715 of the general statutes is repealed and the
53 following is substituted in lieu thereof (*Effective October 1, 2015*):

54 (a) One or more shareholders may create a voting trust, conferring
55 on a trustee the right to vote or otherwise act for them, by signing an
56 agreement setting out the provisions of the trust, which may include
57 anything consistent with its purpose, and transferring their shares to
58 the trustee. When a voting trust agreement is signed, the trustee shall
59 prepare a list of the names and addresses of all voting trust beneficial
60 owners, [of beneficial interests in the trust,] together with the number
61 and class of shares each transferred to the trust, and deliver copies of
62 the list and agreement to the corporation's principal office.

63 (b) A voting trust becomes effective on the date the first shares
64 subject to the trust are registered in the trustee's name. [A voting trust
65 is valid for not more than ten years after its effective date unless
66 extended under subsection (c) of this section.

67 (c) All or some of the parties to a voting trust may extend it for
68 additional terms of not more than ten years each by signing an
69 extension agreement and obtaining the voting trustee's written consent
70 to the extension. An extension is valid for ten years from the date the
71 first shareholder signs the extension agreement. The voting trustee
72 must deliver copies of the extension agreement and list of beneficial
73 owners to the corporation's principal office. An extension agreement
74 binds only those parties signing it.]

75 (c) Limits, if any, on the duration of a voting trust shall be as set

76 forth in the voting trust, except that a voting trust that became effective
77 on or before September 30, 2015, is valid for not more than ten years
78 after its effective date unless such voting trust is: (1) Extended in
79 accordance with the provisions of subsection (d) of this section; or (2)
80 amended to provide otherwise by unanimous agreement of the parties
81 to the voting trust.

82 (d) All or some of the parties to a voting trust in effect on or before
83 September 30, 2015, may extend such voting trust for additional terms
84 of not more than ten years each by signing an extension agreement and
85 obtaining the voting trustee's written consent to the extension. Such
86 extension is valid for ten years from the date the first shareholder signs
87 the extension agreement. The voting trustee must deliver copies of the
88 extension agreement and list of beneficial owners to the corporation's
89 principal office. An extension agreement binds only those parties
90 signing the extension agreement.

91 Sec. 3. Section 33-717 of the general statutes is repealed and the
92 following is substituted in lieu thereof (*Effective October 1, 2015*):

93 (a) An agreement among the shareholders of a corporation that
94 complies with this section is effective among the shareholders and the
95 corporation even though it is inconsistent with one or more other
96 provisions of sections 33-600 to 33-998, inclusive, as amended by this
97 act, in that it:

98 (1) Eliminates the board of directors or restricts the discretion or
99 powers of the board of directors;

100 (2) Governs the authorization or making of distributions whether or
101 not in proportion to ownership of shares, subject to the limitations in
102 section 33-687;

103 (3) Establishes who shall be directors or officers of the corporation,
104 or their terms of office or manner of selection or removal;

105 (4) Governs, in general or in regard to specific matters, the exercise
106 or division of voting power by or between the shareholders and

107 directors or by or among any of them, including use of weighted
108 voting rights or director proxies;

109 (5) Establishes the terms and conditions of any agreement for the
110 transfer or use of property or the provision of services between the
111 corporation and any shareholder, director, officer or employee of the
112 corporation or among any of them;

113 (6) Transfers to one or more shareholders or other persons all or
114 part of the authority to exercise the corporate powers or to manage the
115 business and affairs of the corporation, including the resolution of any
116 issue about which there exists a deadlock among directors or
117 shareholders;

118 (7) Requires dissolution of the corporation at the request of one or
119 more of the shareholders or upon the occurrence of a specified event or
120 contingency; or

121 (8) Otherwise governs the exercise of the corporate powers or the
122 management of the business and affairs of the corporation or the
123 relationship among the shareholders, the directors and the
124 corporation, or among any of them, and is not contrary to public
125 policy.

126 (b) An agreement authorized by this section shall be: (1) Set forth
127 (A) in the certificate of incorporation or bylaws and approved by all
128 persons who are shareholders at the time of the agreement or (B) in a
129 written agreement that is signed by all persons who are shareholders
130 at the time of the agreement and is made known to the corporation;
131 and (2) subject to amendment only by all persons who are
132 shareholders at the time of the amendment, unless the agreement
133 provides otherwise. [; and (3) valid for ten years, unless the agreement
134 provides otherwise.]

135 (c) The existence of any agreement authorized by this section shall
136 be noted conspicuously on the front or back of each certificate for
137 outstanding shares or on the information statement required by

138 subsection (b) of section 33-677. If at the time of the agreement the
139 corporation has shares outstanding represented by certificates, the
140 corporation shall recall the outstanding certificates and issue substitute
141 certificates that comply with this subsection. The failure to note the
142 existence of the agreement on the certificate or information statement
143 shall not affect the validity of the agreement or any action taken
144 pursuant to it. Any purchaser of shares who, at the time of purchase,
145 did not have knowledge of the existence of the agreement shall be
146 entitled to rescission of the purchase. A purchaser shall be deemed to
147 have knowledge of the existence of the agreement if its existence is
148 noted on the certificate or information statement for the shares in
149 compliance with this subsection and, if the shares are not represented
150 by a certificate, the information statement is delivered to the purchaser
151 at or prior to the time of purchase of the shares. An action to enforce
152 the right of rescission authorized by this subsection must be
153 commenced within the earlier of ninety days after discovery of the
154 existence of the agreement or two years after the time of purchase of
155 the shares.

156 (d) An agreement authorized by this section shall cease to be
157 effective when the corporation becomes a public corporation. If the
158 agreement ceases to be effective for any reason, the board of directors
159 may, if the agreement is contained or referred to in the corporation's
160 certificate of incorporation or bylaws, adopt an amendment to the
161 certificate of incorporation or bylaws, without shareholder action, to
162 delete the agreement and any references to it.

163 (e) An agreement authorized by this section that limits the
164 discretion or powers of the board of directors shall relieve the directors
165 of, and impose upon the person or persons in whom such discretion or
166 powers are vested, liability for acts or omissions imposed by law on
167 directors to the extent that the discretion or powers of the directors are
168 limited by the agreement.

169 (f) The existence or performance of an agreement authorized by this
170 section shall not be a ground for imposing personal liability on any

171 shareholder for the acts or debts of the corporation even if the
172 agreement or its performance treats the corporation as if it were a
173 partnership or results in failure to observe the corporate formalities
174 otherwise applicable to the matters governed by the agreement.

175 (g) Incorporators or subscribers for shares may act as shareholders
176 with respect to an agreement authorized by this section if no shares
177 have been issued when the agreement is made.

178 (h) Limits, if any, on the duration of an agreement authorized by
179 this section shall be as set forth in the agreement, except that such an
180 agreement in effect on or before September 30, 2015, is valid for ten
181 years unless the agreement provides otherwise.

182 Sec. 4. Section 33-736 of the general statutes is repealed and the
183 following is substituted in lieu thereof (*Effective October 1, 2015*):

184 [The certificate of incorporation or bylaws may prescribe
185 qualifications for directors. A director need not be a resident of this
186 state or a shareholder of the corporation unless the certificate of
187 incorporation or bylaws so prescribe.]

188 (a) The certificate of incorporation or bylaws may prescribe
189 qualifications for directors or nominees for directors. Qualifications for
190 directors or nominees for directors shall be lawful and reasonable as
191 applied to the corporation.

192 (b) A requirement that is based on a past, current or prospective
193 action, or expression of an opinion, by a nominee or director that could
194 limit the ability of a nominee or director to discharge his or her duties
195 as a director is not a permissible qualification under this section; except
196 that a qualification may include not being or having been subject to
197 specified criminal, civil or regulatory sanctions or not having been
198 removed as a director by judicial action or for cause.

199 (c) A director need not be a resident of this state or a shareholder of
200 the corporation unless the certificate of incorporation or bylaws so
201 prescribe.

202 (d) A qualification for nomination for director prescribed before a
203 person's nomination shall apply to such person at the time of
204 nomination. A qualification for nomination for director prescribed
205 after a person's nomination shall not apply to such person with respect
206 to such nomination.

207 (e) A qualification for director prescribed before the start of a
208 director's term may apply only at the time an individual becomes a
209 director or may apply during a director's term. A qualification
210 prescribed during a director's term shall not apply to that director
211 before the end of that term.

212 Sec. 5. Section 33-757 of the general statutes is repealed and the
213 following is substituted in lieu thereof (*Effective October 1, 2015*):

214 (a) A director who votes for or assents to a distribution made in
215 violation of section 33-687 or [33-887a] subsection (a) of section 33-887b
216 or the certificate of incorporation is personally liable to the corporation
217 for the amount of the distribution that exceeds what could have been
218 distributed without violating section 33-687 or [33-887a] subsection (a)
219 of section 33-887b or the certificate of incorporation if it is established
220 that he did not perform his duties in compliance with section 33-756 or
221 [33-887a] subsection (a) of section 33-887b. In any proceeding
222 commenced under this section, a director has all of the defenses
223 ordinarily available to a director.

224 (b) A director held liable under subsection (a) of this section for an
225 unlawful distribution is entitled to contribution: (1) From every other
226 director who could be held liable under subsection (a) of this section
227 for the unlawful distribution; and (2) from each shareholder for the
228 amount the shareholder accepted knowing the distribution was made
229 in violation of section 33-687 or [33-887a] subsection (a) of section 33-
230 887b or the certificate of incorporation.

231 (c) A proceeding under this section to enforce (1) the liability of a
232 director under subsection (a) of this section is barred unless it is
233 commenced within two years after the date (A) on which the effect of

234 the distribution was measured under subsection (e) or (g) of section 33-
235 687, (B) as of which a violation of subsection (a) of section 33-687
236 occurred as a consequence of disregarding a restriction in the
237 certificate of incorporation, or (C) on which the distribution of assets to
238 shareholders was made under [section 33-887a] subsection (a) of
239 section 33-887b; or (2) contribution or recoupment under subsection (b)
240 of this section is barred unless it is commenced within one year after
241 the liability of the claimant has been finally adjudicated under
242 subsection (a) of this section.

243 (d) For purposes of this section, a director shall be deemed to have
244 voted for a distribution if such director was present at the meeting of
245 the board of directors or committee thereof at the time such
246 distribution was authorized and did not vote in dissent therefrom, or if
247 such director consented thereto pursuant to section 33-749.

248 Sec. 6. Section 33-773 of the general statutes is repealed and the
249 following is substituted in lieu thereof (*Effective October 1, 2015*):

250 (a) A corporation may, before final disposition of a proceeding,
251 advance funds to pay for or reimburse the reasonable expenses
252 incurred in connection with the proceeding by an individual who is a
253 party to the proceeding because that individual is a member of the
254 board of directors if the director delivers to the corporation [:

255 (1) A signed written affirmation of the director's good faith belief
256 that the relevant standard of conduct described in section 33-771 has
257 been met by the director or that the proceeding involves conduct for
258 which liability has been limited under a provision of the certificate of
259 incorporation as authorized by subdivision (4) of subsection (b) of
260 section 33-636; and

261 (2) A] a signed written undertaking of the director to repay any
262 funds advanced if (1) the director is not entitled to mandatory
263 indemnification under section 33-772, and (2) it is ultimately
264 determined under section 33-774, as amended by this act, or 33-775
265 that the director [has not met the relevant standard of conduct

266 described in section 33-771] is not entitled to indemnification.

267 (b) The undertaking required by [subdivision (2) of] subsection (a)
268 of this section must be an unlimited general obligation of the director
269 but need not be secured and may be accepted without reference to the
270 financial ability of the director to make repayment.

271 (c) Authorizations under this section shall be made:

272 (1) By the board of directors: (A) If there are two or more qualified
273 directors, by a majority vote of all the qualified directors, a majority of
274 whom shall for such purpose constitute a quorum, or by a majority of
275 the members of a committee consisting solely of two or more qualified
276 directors appointed by such a vote; or (B) if there are fewer than two
277 qualified directors, by the vote necessary for action by the board in
278 accordance with subsection (c) of section 33-752, in which
279 authorization directors who are not qualified directors may
280 participate; or

281 (2) By the shareholders, but shares owned by or voted under the
282 control of a director who at the time is not a qualified director may not
283 be voted on the authorization.

284 Sec. 7. Section 33-774 of the general statutes is repealed and the
285 following is substituted in lieu thereof (*Effective October 1, 2015*):

286 (a) A director who is a party to a proceeding because he is a director
287 may apply for indemnification or an advance for expenses to the court
288 conducting the proceeding or to another court of competent
289 jurisdiction. After receipt of an application and after giving any notice
290 it considers necessary, the court shall: (1) Order indemnification if it
291 determines that the director is entitled to mandatory indemnification
292 under section 33-772; (2) order indemnification or advance for
293 expenses if the court determines that the director is entitled to
294 indemnification or advance for expenses pursuant to a provision
295 authorized by subsection (a) of section 33-778, as amended by this act;
296 or (3) order indemnification or advance for expenses if the court

297 determines, in view of all the relevant circumstances, that it is fair and
298 reasonable [(A)] to indemnify [the director or (B) to] or advance
299 expenses to the director, even if he has not met the relevant standard of
300 conduct set forth in subsection (a) of section 33-771, failed to comply
301 with section 33-773, as amended by this act, or was adjudged liable in a
302 proceeding referred to in subdivision (1) or (2) of subsection (d) of
303 section 33-771, provided if he was adjudged so liable his
304 indemnification shall be limited to reasonable expenses incurred in
305 connection with the proceeding.

306 (b) If the court determines that the director is entitled to
307 indemnification under subdivision (1) of subsection (a) of this section
308 or to indemnification or advance for expenses under subdivision (2) of
309 subsection (a) of this section, it shall also order the corporation to pay
310 the director's reasonable expenses incurred in connection with
311 obtaining court-ordered indemnification or advance for expenses. If
312 the court determines that the director is entitled to indemnification or
313 advance for expenses under subdivision (3) of subsection (a) of this
314 section, it may also order the corporation to pay the director's
315 reasonable expenses to obtain court-ordered indemnification or
316 advance for expenses.

317 Sec. 8. Section 33-776 of the general statutes is repealed and the
318 following is substituted in lieu thereof (*Effective October 1, 2015*):

319 (a) A corporation may indemnify and advance expenses under
320 sections 33-770 to 33-779, inclusive, as amended by this act, to an
321 officer [, employee or agent] of the corporation who is a party to a
322 proceeding because he is an officer [, employee or agent] of the
323 corporation (1) to the same extent as a director, and (2) if he is an
324 officer [, employee or agent] but not a director, to such further extent [,
325 consistent with public policy,] as may be provided by contract, the
326 certificate of incorporation, the bylaws or a resolution of the board of
327 directors except for (A) liability in connection with a proceeding by or
328 in the right of the corporation other than for expenses incurred in
329 connection with the proceeding, or (B) liability arising out of conduct

330 that (i) constitutes a knowing and culpable violation of law by the
331 officer, (ii) enabled the officer to receive an improper personal gain,
332 (iii) showed a lack of good faith and conscious disregard for the duty
333 of the officer to the corporation under circumstances in which the
334 officer was aware that his conduct or omission created an unjustifiable
335 risk of serious injury to the corporation, or (iv) constituted a sustained
336 and unexcused pattern of inattention that amounted to an abdication
337 of the officer's duty to the corporation. A corporation may delegate to
338 its general counsel or other specified officer or officers the ability
339 under this subsection to determine that indemnification or advance for
340 expenses to such officer [, employee or agent] is permissible and the
341 ability to authorize payment of such indemnification or advance for
342 expenses. Nothing in this subdivision shall in any way limit either the
343 ability or the obligation of a corporation to indemnify and advance
344 expenses under other applicable law to any officer [, employee or
345 agent] who is not a director.

346 (b) The provisions of subdivision (2) of subsection (a) of this section
347 shall apply to an officer [, employee or agent] who is also a director if
348 the basis on which he is made a party to the proceeding is an act or
349 omission solely as an officer. [, employee or agent.]

350 (c) An officer [, employee or agent] of a corporation who is not a
351 director is entitled to mandatory indemnification under section 33-772
352 and may apply to a court under section 33-774, as amended by this act,
353 for indemnification or advance for expenses, in each case to the same
354 extent to which a director may be entitled to indemnification or
355 advance for expenses under said sections.

356 (d) A corporation which was incorporated under the laws of this
357 state, whether under chapter 599 of the general statutes, revised to
358 January 1, 1995, or any other general law or special act, prior to
359 January 1, 1997, shall, except to the extent that the certificate of
360 incorporation expressly provides otherwise, indemnify under sections
361 33-770 to 33-779, inclusive, as amended by this act, except subdivision
362 (2) of subsection (a) of section 33-771, each officer, employee or agent

363 of the corporation who is not a director to the same extent as the
364 corporation is permitted to provide the same to a director pursuant to
365 subdivision (1) of subsection (a) and subsections (b), (c) and (d) of
366 section 33-771, as limited by section 33-775, and for this purpose the
367 determination required by section 33-775 may in addition be made by
368 the general counsel of the corporation, or such other or additional
369 officer or officers as the board of directors may specify.

370 Sec. 9. Section 33-777 of the general statutes is repealed and the
371 following is substituted in lieu thereof (*Effective October 1, 2015*):

372 A corporation may purchase and maintain insurance on behalf of an
373 individual who is a director [.] or officer [, employee or agent] of the
374 corporation, or who, while a director [.] or officer [, employee or agent]
375 of the corporation, serves at the corporation's request as a director,
376 officer, partner, trustee, employee or agent of another domestic or
377 foreign corporation, partnership, joint venture, trust, employee benefit
378 plan or other entity, against liability asserted against or incurred by
379 him in that capacity or arising from his status as a director [.] or officer
380 [, employee or agent,] whether or not the corporation would have
381 power to indemnify or advance expenses to him against the same
382 liability under sections 33-770 to 33-779, inclusive, as amended by this
383 act.

384 Sec. 10. Section 33-778 of the general statutes is repealed and the
385 following is substituted in lieu thereof (*Effective October 1, 2015*):

386 (a) A corporation may, by a provision in its certificate of
387 incorporation or bylaws or in a resolution adopted or a contract
388 approved by its board of directors or shareholders, obligate itself in
389 advance of the act or omission giving rise to a proceeding to provide
390 indemnification in accordance with section 33-771 or advance funds to
391 pay for or reimburse expenses in accordance with section 33-773, as
392 amended by this act. Any such obligatory provision shall be deemed to
393 satisfy the requirements for authorization referred to in subsection (c)
394 of section 33-773, as amended by this act, and subsection (c) of section
395 33-775. Any such provision that obligates the corporation to provide

396 indemnification to the fullest extent permitted by law shall be deemed
397 to obligate the corporation to advance funds to pay for or reimburse
398 expenses in accordance with section 33-773, as amended by this act, to
399 the fullest extent permitted by law, unless the provision specifically
400 provides otherwise.

401 (b) A right of indemnification or to advances for expenses created
402 by this subpart or under subsection (a) of this section and in effect at
403 the time of an act or omission shall not be eliminated or impaired with
404 respect to such act or omission by an amendment of the certificate of
405 incorporation or bylaws or a resolution of the directors or
406 shareholders, adopted after the occurrence of such act or omission,
407 unless, in the case of a right created under subsection (a) of this
408 section, the provision creating such right and in effect at the time of
409 such act or omission explicitly authorizes such elimination or
410 impairment after such act or omission has occurred.

411 (c) Any provision pursuant to subsection (a) of this section shall not
412 obligate the corporation to indemnify or advance expenses to a
413 director of a predecessor of the corporation, pertaining to conduct with
414 respect to the predecessor, unless otherwise specifically provided. Any
415 provision for indemnification or advance for expenses in the certificate
416 of incorporation, bylaws or resolution of the board of directors or
417 shareholders of a predecessor of the corporation in a merger or in a
418 contract to which the predecessor is a party, existing at the time the
419 merger takes effect, shall be governed by subdivision (3) of subsection
420 (a) of section 33-820.

421 (d) Subject to subsection (b) of this section, a corporation may, by a
422 provision in its certificate of incorporation, limit any of the rights to
423 indemnification or advance for expenses created by or pursuant to
424 sections 33-770 to 33-779, inclusive, as amended by this act.

425 (e) Sections 33-770 to 33-779, inclusive, as amended by this act, do
426 not limit a corporation's power to pay or reimburse expenses incurred
427 by a director or officer in connection with his appearance as a witness
428 in a proceeding at a time when he is not a party.

429 (f) Sections 33-770 to 33-779, inclusive, as amended by this act, do
430 not limit a corporation's power to indemnify, advance expenses to, or
431 provide or maintain insurance on behalf of an employee or agent.

432 Sec. 11. Subsection (f) of section 34-32c of the general statutes is
433 repealed and the following is substituted in lieu thereof (*Effective*
434 *October 1, 2015*):

435 (f) Upon the filing of the certificate of reinstatement with the
436 Secretary of the State, reinstatement shall be effective, the legal
437 existence of the reinstated limited partnership shall commence and it
438 shall be revested with its rights and powers under this chapter. If
439 reinstatement follows cancellation of the limited partnership by
440 forfeiture, as provided in section 34-32b, the reinstatement shall relate
441 back to and take effect as of the effective date of the cancellation, and
442 the limited partnership shall resume carrying out its business as if the
443 cancellation had never occurred. No action or proceeding, civil or
444 criminal, to which the limited partnership is a party at the time of
445 reinstatement shall be affected by such reinstatement except as the
446 court shall, under the circumstances, determine. The reinstated limited
447 partnership shall be estopped to deny its legal existence during such
448 time as its rights and powers were forfeited.

449 Sec. 12. Subsection (f) of section 34-216 of the general statutes is
450 repealed and the following is substituted in lieu thereof (*Effective*
451 *October 1, 2015*):

452 (f) Upon the filing of the certificate of reinstatement with the
453 Secretary of the State, reinstatement shall be effective, the legal
454 existence of the reinstated limited liability company shall commence
455 and it shall be revested with its rights and powers under sections 34-
456 100 to 34-242, inclusive, as amended by this act. If reinstatement
457 follows dissolution by forfeiture, as provided in section 34-215, the
458 reinstatement shall relate back to and take effect as of the effective date
459 of the dissolution by forfeiture, and the limited liability company shall
460 resume carrying out its business as if the dissolution by forfeiture had
461 never occurred. No action or proceeding, civil or criminal, to which the

462 limited liability company is a party at the time of reinstatement shall
 463 be affected by such reinstatement except as the court shall, under the
 464 circumstances, determine. Any claim against the limited liability
 465 company barred as provided in section 34-213 and not otherwise
 466 barred, shall be relieved of such bar upon reinstatement of the limited
 467 liability company and the reinstated limited liability company shall be
 468 estopped to deny its legal existence during such time as its rights and
 469 powers were forfeited.

This act shall take effect as follows and shall amend the following sections:

| | | |
|-----------|-----------------|-----------|
| Section 1 | October 1, 2015 | 33-706 |
| Sec. 2 | October 1, 2015 | 33-715 |
| Sec. 3 | October 1, 2015 | 33-717 |
| Sec. 4 | October 1, 2015 | 33-736 |
| Sec. 5 | October 1, 2015 | 33-757 |
| Sec. 6 | October 1, 2015 | 33-773 |
| Sec. 7 | October 1, 2015 | 33-774 |
| Sec. 8 | October 1, 2015 | 33-776 |
| Sec. 9 | October 1, 2015 | 33-777 |
| Sec. 10 | October 1, 2015 | 33-778 |
| Sec. 11 | October 1, 2015 | 34-32c(f) |
| Sec. 12 | October 1, 2015 | 34-216(f) |

Statement of Legislative Commissioners:

In Section 3(h), "unless the agreement provided otherwise" was changed to "unless the agreement provides otherwise" for internal consistency; in Section 5(c), "section [33-887a] subsection (a) of section 33-887b" was changed to "[section 33-887a] subsection (a) of section 33-887b" for accuracy; and in Section 8(a), opening brackets were moved from before "employee" to include commas after "officer" for accuracy.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which modifies certain organizational requirements for businesses registered with the Secretary of the State, has no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 967*****AN ACT CONCERNING REVISIONS TO THE CONNECTICUT BUSINESS CORPORATION ACT, THE UNIFORM LIMITED PARTNERSHIP ACT AND THE CONNECTICUT LIMITED LIABILITY COMPANY ACT.*****SUMMARY:**

This bill makes a number of changes in the business corporation statutes. It:

1. removes time limits on the validity of voting trusts and shareholder agreements and allows the agreements creating them to set their term, for agreements taking effect after September 30, 2015;
2. requires qualifications for directors or nominees for director to be reasonable and adds specific provisions about qualifications;
3. limits when business corporations can indemnify and advance expenses to officers;
4. eliminates statutory provisions indemnifying and advancing expenses to corporate employees and agents but does not limit the corporation's ability to provide these protections otherwise;
5. changes the documentation requirements for directors seeking an advance of funds or reimbursement for reasonable expenses during the course of a legal proceeding that involves him or her as director;
6. makes minor changes regarding proxies; and
7. makes technical and conforming changes and corrects an improper reference.

The bill also allows the reinstatement of a limited liability company (LLC) or limited partnership (LP), after its administrative dissolution or cancellation for failure to maintain an agent for service of process or file its annual report, to relate back to the effective date of the dissolution.

EFFECTIVE DATE: October 1, 2015

§ 1 — PROXIES

Electronic Appointments

By law, a shareholder or his or her agent or attorney can appoint a proxy to vote or act on the shareholder's behalf by electronically transmitting the appointment. The bill requires the electronic transmission to contain or be accompanied by information that allows someone to determine the transmission is authorized by the shareholder, agent, or attorney.

Revocability

By law, a proxy is irrevocable if (1) it states it is irrevocable and (2) the appointment is coupled with an interest, which includes appointment of someone who purchases or agrees to purchase the shares, a corporate employee whose employment contract requires appointment, or a party to a voting agreement.

By law, someone who purchases shares subject to an irrevocable appointment can revoke the appointment if he or she did not know of it when acquiring the shares and the appointment was not noted conspicuously on certain documents. The bill specifies that an irrevocable appointment continues after other transfers unless the appointment provides otherwise.

§ 2 — VOTING TRUST

By law, shareholders can sign an agreement to create a voting trust that gives a trustee the right to vote or act on their behalf. Current law limits a voting trust's validity to no more than 10 years but allows the parties to extend it for up to an additional 10 years. The bill establishes

new rules for the length of voting trusts' validity:

1. For voting trusts that become effective starting October 1, 2015, the bill allows the trust to set any time limit.
2. For voting trusts effective before October 1, 2015, the bill retains the 10-year limit but allows (a) the parties to unanimously agree to amend the trust to provide a longer limit or (b) all or some of the parties to extend the trust for up to 10 additional years in the same way as currently applies (i.e. by signing an agreement that binds the parties signing it, obtaining the trustee's consent to the extension, and delivering copies of the agreement and a list of beneficial owners to the corporation).

§ 3 — SHAREHOLDER AGREEMENTS

The law allows shareholders to form agreements that are effective between them and the corporation on certain topics, even if they are inconsistent with the statutes governing corporations. These agreements may include such things as eliminating the board, restricting the board's powers or discretion, provisions governing distributions, establishing who is a director or officer, provisions governing the exercise or division of voting power between the shareholders and directors, requiring dissolution under certain circumstances, and the exercise of corporate powers or management of the corporation's affairs.

Currently, these agreements are effective for 10 years unless the agreement provides otherwise. Under the bill, agreements entered into beginning October 1, 2015 may provide any time limit.

§ 4 — QUALIFICATIONS FOR DIRECTORS AND NOMINEES

The bill specifies that the certificate of incorporation or corporate bylaws may set the qualifications for nominees for director, as well as for directors as authorized by existing law.

By law, a director does not need to be a state resident or shareholder unless the certificate or bylaws requires it. The bill adds

new qualifications for directors and nominees that:

1. require any qualification set by the certificate or bylaws to be lawful and reasonable and
2. prohibit requirements based on a past, current, or prospective action or expression of an opinion that could limit the person's ability to discharge the duties of a director, but allow a qualification that a person (a) have no past or current criminal, civil, or regulatory sanctions or (b) not have been removed as a director by judicial action or for cause.

The bill provides that a qualification for nomination only applies to a person if it is prescribed before he or she is nominated. Qualifications for directors prescribed before a director's term starts can apply at the time the individual becomes a director or during the term but those prescribed during a director's term do not apply during that term.

§§ 6-10 — INDEMNIFICATION

Officers

The bill limits when business corporations can indemnify and advance expenses to officers. Currently, they may provide these protections to officers (1) to the same extent as directors, if the officer is also a director or (2) as provided by contract, the corporation's certificate of incorporation or bylaws, or a board resolution. When an officer is not also a director, the bill prohibits indemnification and advancing expenses based on liability from a legal proceeding by or on behalf of the corporation, other than for expenses incurred connected to the proceeding. It also prohibits it when the officer's conduct:

1. was a knowing and culpable violation of law;
2. enabled the officer to receive an improper personal gain;
3. showed a lack of good faith and conscious disregard for the officer's duty to the corporation under circumstances in which the officer was aware that his or her conduct or omission

created an unjustifiable risk of serious injury to the corporation;
or

4. was a sustained and unexcused pattern of inattention amounting to an abdication of the officer's duty to the corporation.

The bill also specifies that the indemnification laws do not limit a corporation's power to reimburse expenses that an officer incurs when appearing as a witness in a proceeding when he or she is not a party. Corporations already have this power for directors.

Employees and Agents

The bill eliminates statutory rules on how corporations indemnify, advance expenses to, and insure employees and agents. These rules currently treat employees and agents the same as officers. The bill also eliminates provisions:

1. entitling an employee or agent to mandatory indemnification for reasonable expenses in an action based on his or her actions as employee or agent, where the employee or agent successfully defended himself or herself and
2. allowing the employee or agent to request indemnification or advances in similar circumstances.

The bill provides that it does not limit a corporation's ability to indemnify, advance expenses, or provide insurance for an employee or agent. Thus, corporations may still provide these protections to employees and agents subject to any common law rules that may apply and contracts the corporations may have with their employees or agents.

Directors

Documentation. The bill changes the documentation requirements for directors seeking an advance of funds or reimbursement for reasonable expenses during the course of a legal proceeding that

involves him or her as director.

It eliminates the requirement that the director submit to the corporation a signed written affirmation:

1. of his or her good faith belief that he or she has followed the relevant standard of conduct and will be entitled to indemnification under the statutes or the certificate of incorporation or
2. that the proceeding involves conduct covered by a liability protection in the certificate of incorporation. (The law allows the certificate to limit the monetary amount of a director's personal liability to the corporation or its shareholders for certain breaches of his or her duty as director.)

The bill retains the requirement that the director submit a signed written undertaking to repay the funds if (1) he or she is not entitled to mandatory indemnification under the statutes because he or she was wholly successful in defending the proceeding and (2) it is ultimately determined that he or she has not met the relevant standard of conduct to qualify for indemnification.

Committee Approval. The law allows a majority vote of a board committee consisting of at least two qualified directors to authorize these advance payments. The bill specifies that the committee must consist only of qualified directors. Generally, qualified directors are directors who are not parties in the court proceeding and do not have a material relationship with a director who is a party.

§§ 11-12 — REINSTATEMENT OF LLC OR LP

By law, the secretary of the state can dissolve an LLC or cancel an LP by forfeiture if the entity fails to (1) maintain a statutory agent for service of process or (2) file its annual report for more than one year. But, the LLC or LP can apply for reinstatement.

Under the bill, the LLC's or LP's reinstatement relates back and is

effective as of the dissolution's or cancellation's effective date. The entity resumes carrying out business as if the dissolution or cancellation never occurred. Currently, when these entities are reinstated for these or other reasons, reinstatement takes effect when the certificate of reinstatement is filed with the secretary.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 31 Nay 10 (03/27/2015)